IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1397 of 1993

For Approval and Signature:

THE HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JASHUBHAI J SHAH, THRO' BJ PARIKH & M J PARIKH - Petitioner(s)

Versus

HEIR OF RAMANLAL H THANAWALA KAPILABEN R THANAWALA - Respondent(s)

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Appearance :

MR DM THAKKAR for Petitioner

MS KJ BRAHMBHATT for Respondent

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CORAM :THE HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 16`/06/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 15th September, 1993 passed by the learned Joint District Judge, Nadiad in Civil Regular Appeal No. 245 of 1986, the

respondent-defendant in Regular Civil Suit No. 107 of 1983 has preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "**the Rent Act**"].

The respondent-plaintiff instituted Regular Civil Suit NO. 107 of 1983 in the Court of learned Civil Judge [JD], Khambhat for recovery of possession of the suit house. It was alleged that the suit house was ancestral property of the plaintiff which was leased to the defendant for his residence on a monthly rent of Rs. 8/=. A rent note was executed by the defendant on 12th July, 1946. The defendant had acquired a suitable alternative accommodation and had shifted his residence to such alternative accommodation. The defendant had changed the user of the suit house and was using it as a godown for his business in utensils. The decree for eviction was sought on the ground of change of user and acquisition of suitable alternative accommodation. The suit was contested by the defendant by filing written statement Exh.19. It was denied that the defendant had ceased to reside in the suit house and that he had changed the user of the suit house. Pending the suit, the Court

Commissioner was appointed to draw a panchnama of the suit house. The panchnama Exh.51 proved that the defendant had not been residing in the suit house and that the suit house was being used as a godown for storage of the utensils. The learned Civil Judge relied upon copy of the rent note Mark 3/1. As the rent note did not contain a covenant that the suit house was leased for residential purpose alone, the learned Civil Judge recorded finding in favour of the defendant. By judgment and order dated 30th August, 1986, the learned Civil Judge passed decree against the plaintiff. Feeling aggrieved, the plaintiff preferred Civil Regular Appeal No. 235 of 1986 in the Court of learned District Judge, Kheda. The learned Joint District Judge, Nadiad, by the impugned judgment and order dated 15th September, 1993, allowed the Appeal. It has been held that the suit house was leased for dominant purpose of residence and that the defendant had acquired a suitable alternative accommodation.

Mr. Thakkar has assailed the judgment of the lower appellate Court. He has submitted that the finding recorded by the lower appellate court is not supported by evidence on record. He has submitted that the defendant had been

using the suit house for commercial purpose since inception of the tenancy. The defendant, therefore, cannot be evicted either on the ground of change of user or on the ground of acquisition of alternative accommodation.

I have perused the pleadings and the evidence on record. I am unable to agree with Mr. Thakkar. The defendant in his written statement made a categorical statement that the defendant had been using the suit house for residential purpose. In other words, it was tacitly admitted that the suit house was leased for residential purpose. Even if it is believed that the defendant was storing utensils in the part of the suit house, pre-dominant purpose the suit house was used was for residence. It is proved on evidence that the defendant had ceased to use the suit house for residential purpose and was using the suit house exclusively for storage of goods. The defendant has rightly been held to have changed the user of the suit house and to have acquired suitable alternative accommodation. In view of the said finding, the decree for eviction was inevitable. No case for interference is made out.

In view of the above discussion, the Revision Application is dismissed with cost. **Rule** is discharged. *Interim* relief is vacated.

{Miss R.M Doshit, J.}

*Prakash**